UNITED
NATIONS

CAT

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.
GENERAL

CAT/C/SR.112
7 May 1992

Original: ENGLISH

COMMITTEE AGAINST TORTURE

Eighth session

SUMMARY RECORD OF THE 112th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 1 May 1992, at 3 p.m.

Chairman: Mr. VOYAME

CONTENTS

Consideration of reports submitted by States parties under article 19 of the Convention

Initial report of Romania (continued)

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the meetings of this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.92-12336/3799H

The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 7)

Initial report of Romania (continued) (CAT/C/16/Add.1)

1. The CHAIRMAN invited the Romanian delegation to respond to the questions raised by the Committee.

2. Mr. ZAHARIA (Romania) thanked the Committee for the questions, which his delegation would do its best to answer, although the statistics requested were in some cases not yet available.

3. In reply to a question concerning the applicability of article 5, paragraph 2, of the Convention, he said that Romanian domestic law contained provisions governing the competence of the State. Articles 3-9 of the Penal Code consisted of texts virtually identical to those of most European countries' penal laws. Article 6 of the Code allowed the application of article 5, paragraph 2, of the Convention. Under article 4 of the Romanian Extradition Act, the extradition of Romanian citizens, or of non-Romanians domiciled in Romania or having the right of exile, was not permitted; thus, pursuant to the rule aut dedere aut judicare, Romanian courts were competent to deal with the offences concerned. Paragraph 32 of the initial report (CAT/C/16/Add.1) related to the provisions of article 7 of the Penal Code, which would allow such international provisions to be implemented.

4. With regard to paragraph 40 of the report, article 8 of the Convention was directly applicable. The relevant bilateral extradition agreements in existence prior to Romania's accession to the Convention normally provided for extradition to be granted in cases involving a penalty of at least one or two years' imprisonment. Torture was, of course, covered by those provisions.

5. With regard to the questions raised concerning article 14, the general intention of Romanian penal law was to involve third-party liability in order that a victim might institute civil proceedings. With regard to such liability, jurisprudence generally held that, if the State was involved through an agent, the victim could sue the State as well as the directly guilty party for damages. A victim could even lodge complaints with the Attorney-General of the Republic. Cases of torture would again be covered by such provisions. If, however, the alleged guilty party had been acquitted in criminal proceedings, the matter might be deemed res judicata. In general, however, civil proceedings were applicable against the State and the person found guilty, under the provisions of article 22 of the Code of Penal Procedure.

6. Article 15 of the Convention was, in Romania's view, directly applicable. Article 68 of the Romanian Code of Penal Procedure rendered null and void any evidence obtained by the means referred to in paragraph 52 of the report. The reason why torture was not expressly mentioned in the relevant provisions was that, at the time they had been drafted, the offence as such had not been recognized in the Penal Code.

7. A question had been asked about the hierarchy of the courts. The relevant Romanian law was 24 years old, and a new bill on the organization of the judiciary was being drafted. The main problem was the amount of new legislation to be dealt with. In the past 2 years 150 bills had received attention. Priority had been given to electoral laws and to laws enabling Romania to adapt to a market economy; the law on the organization of the judiciary, therefore, was still pending. Under the judicial system, there were courts of first instance, the district courts; above them came the departmental courts; and lastly there was the Supreme Court, which was competent to rule even on the powers of the President of the Republic. An additional instance, inherited from the former dictatorship, still allowed the President of the Republic extraordinary recourse against decisions, but that was soon to be abolished. A number of special courts, such as the maritime court, existed, and there were still military courts of first and second instance to deal with offences against the State and the property of the armed forces. The legislation being drafted would restrict the competence of military courts to offences by military personnel and against property of the armed forces.

8. Members of the judiciary were currently appointed by the Minister of Justice. Pursuant to the new bill on the organization of the judiciary, appointments would be made by the President of the Republic, on the advice of the Supreme Council of the Magistrature. Articles 123-129 of the Constitution provided that judges were independent and irremovable. Disciplinary matters were currently dealt with by a court of senior judges; in future, that task would be a matter for the Supreme Council. During the current year, the Council had established a college to provide courses for new members of the judiciary as well as refresher courses. He himself would be one of the teaching staff, who would include members of law faculties. The courses would cover human rights subjects.

9. With regard to a right of appeal against expulsion, the Constitution provided that any person had the right of recourse to the law to defend his legitimate rights and interests; there were no express provisions, however, on the subject of expulsion.

10. On the question of how international law entered into domestic law in the absence of a formal convention, articles 513, 514 and 522 recognized conditions for the applicability of international rulings on certain criminal matters. In the absence of conventions, bilateral arrangements could be established on a basis of reciprocity.

11. On the question of prison establishments, he acknowledged the valuable help given by the Chairman, based on his experience as a special rapporteur on the situation in Romania, which was still a poor country and faced great difficulty in funding improvements in many spheres, including prisons. The relevant law, too, was old, although in a number of respects it did conform to the provisions of relevant international instruments, such as those concerning the separation of men and women and the treatment of minors.

12. In 1991, the administration of prisons had been transferred from the Ministry of the Interior to the Ministry of Justice. Although much remained to be done, the greatest possible efforts were being made to improve

conditions in many respects, such as visiting, work and feeding. Time and funds were needed most. Some 42,000 detainees were having to be held in premises whose total capacity was 30,000.

13. A new law currently being drafted on sentencing would conform to international provisions; a copy of the text would be presented to the Committee. The latter would also be provided with details of the law currently being drafted on the organization of the police. The Securitate had been abolished. The sole body concerned with State security would be the Information Service, whose activities covered matters which might involve jeopardy to the State. All its activities must be reported to Parliament.

14. On the question of amnesty, a Decree-Law promulgated after the revolution of December 1989 covered, inter alia, persons convicted, during the previous regime, of genuinely political offences. During that regime, of course, many such offences had been disguised, by those in authority, under charges such as hooliganism, while activities to promote democracy and human rights had been dubbed political offences.

15. Mr. CIOCLEI (Romania), replying to the question regarding the police officers who had been dismissed, said that the measures taken against them had been of an administrative nature. Those concerned had generally been members of the former political police, known for their professional incompetence or abuse of authority. Some, however, had been tried and sentenced for specific offences.

16. Regarding the requirement for a suspect not to leave the area, the measure was a purely preventive one, intended to ensure the suspect's presence during investigations, and was applicable for a maximum period of 30 days. No house arrest or surveillance was involved, the suspect merely being required to report to the investigating official to answer questions. The specific circumstances in which the measure was applicable were spelt out in special regulations.

17. Regarding the procedure for submitting complaints, it was the military court that was competent to deal with complaints against police and other officers. There was thus no real comparison between the procedure for dealing with complaints against the police and that for dealing with other complaints to the civilian authorities. Such complaints must of course be dealt with in due form, like those addressed to the civil courts, though problems might arise with regard to the rectitude of individual officers dealing with the complaints.

18. Paragraph 48 of the Romanian report dealt with the problem of protection only with regard to detainees. It was true that no special regulations existed to protect complainants or witnesses. However, the special provisions of the Code of Penal Procedure regarding threats, ill-treatment and torture were applicable in such cases. Furthermore, new legislation was envisaged in that area.

19. Many links existed between governmental organs and non-governmental organizations (NGOs). No specific mechanism to facilitate such links was necessary, since it was important that NGOs should preserve their

independence. The Ministries of Foreign Affairs and Justice and the Procurator's Office had made an effort to collaborate with the NGOs, and many NGOs submitted reports containing allegations of abuses. The ministries involved monitored the cases, tried to resolve them and replied to the NGOs. There was also some collaboration with foreign NGOs that had reported on Romania, such as Amnesty International. All such reports were followed up, and efforts were made to resolve the cases in favour of the victims.

20. No statistics were available regarding torture as an offence defined under the new Penal Code. Some cases had arisen, but were still pending. Cases pre-dating the introduction of the new Penal Code had not been addressed in the legislation relating to torture.

21. Unfortunately, he had little to report with regard to the problems in connection with article 10, the full extent of which had become apparent to him only at the current session. It was clear that much work needed to be done in that regard, and that Romania must strive to overcome its shortcomings in the application of that article.

22. In response to Mr. Khitrin's question regarding the Inter-Ministerial Committee, he said that the committee to which his colleague Mr. Zaharia had referred was a committee for the defence of human rights, not a committee to combat crime. All ministries had their own special human rights services. The task now was to ensure better collaboration between those services, under the coordination of the Minister of Justice.

23. Mr. LUNGEANU (Romania), referring to the Chairman's question regarding the application of article 6, paragraph 3, as set forth in paragraph 37 of the Romanian report, conceded that the connection between application of that article and article 136 (4) of the Code of Penal Procedure was tenuous. It was a case of a specific application of general rules. The final subparagraph of article 136 had in any case recently been superseded by Act No. 32 of 1990.

24. Regarding paragraph 45 and the supervision of criminal proceedings, article 216 of the Code of Penal Procedure laid down that the tasks of the prosecutor were to ensure that all offences were investigated, that all persons criminally liable were charged, and that no one was unfairly accused. In addition, the prosecutor ensured that no one was detained or arrested except as laid down by law, and that measures were taken by the police to give effect to those provisions in an expeditious manner. He could also act in a personal capacity, requiring the police to submit to him the complete file relating to a specific case. If he decided that the act or procedural measure in question was illegal, he could cancel it, giving reasons in writing, and could reject evidence brought by the police. Fuller details could be made available if so requested.

25. Regarding supervision of the prison regime by the prosecutor and the procedure for complaints (paras. 45 and 47 of the report), there were several types of prosecutor, each with his special field of supervisory expertise, such as criminal proceedings, prisons, minors, more serious offences and theoretical legal problems. There were also prosecutors dealing with military justice, and those supervising the regime for the execution of sentences or

pre-trial detention. Inspection of prisons or police premises used for pre-trial detention usually took place monthly. In addition, supervision was carried out by the prison authorities and by judges, so that there was a form of institutional parallelism, with meetings between the various authorities and work performed on a joint basis. In any event, the tasks of the various authorities were quite distinct.

26. The prison administration was required to inform the prosecutor immediately in the event of a detainee lodging a complaint. The prosecutor was also a member of a commission set up for the specific purpose of considering the cases of detainees eligible for early release.

27. With regard to article 11 of the Convention, the Code of Penal Procedure set forth rules for the administration of evidence during criminal proceedings, but contained no detailed rules regarding interrogation tactics. Such rules formed part of the teaching of techniques of criminal investigation given to law students and police cadets. Any confession made could subsequently be retracted or invalidated by other evidence, and was not regarded as irrefutable evidence. Confessions obtained under duress were null and void.

28. Solitary confinement was a harsh punishment that did not exist in Romania. The severest form of imprisonment was "rigorous isolation", which involved segregating the detainee from other prisoners. A bill currently being drafted would shortly amend the provisions governing the serving of prison sentences.

29. A question had been asked about the role of the police in criminal proceedings in cases of torture. While three quarters of offences under Romanian criminal law were dealt with by the police, under the supervision of the prosecutor, the prosecutor himself was entrusted with investigation of the most serious offences, including torture. The police never conducted criminal proceedings in cases of torture.

30. Some 15 cases of official misconduct were currently under investigation. They included a case from the Oradea region, in which a police officer allegedly responsible for the ill-treatment of a detainee had been fined for a purely administrative offence. Criminal charges had not been brought, but the Director of Military Prosecutions had requested access to the file on the case, and the probable outcome would be a prosecution under criminal law, although there was every indication that the conduct of the officer concerned had been irreproachable. The fact that such proceedings could be instituted was testimony to the determination of the authorities to establish the rule of law, despite the difficulties inherent in a nascent democracy.

31. Mr. EL-IBRASHI said that he would welcome further information on the jurisdiction of military tribunals in Romania. He asked whether their competence was confined to offences against the State.

32. Mr. LUNGEANU (Romania), replying to an earlier question, said that it was the function of the Procurator's Office to examine and, if necessary, review the legality of decisions taken by the courts.

33. Mr. EL-IBRASHI asked whether a genuine separation of powers between the executive and the judiciary had yet been achieved in Romania. He would welcome clarification regarding the relations between the Procurator's Office and the authority responsible for the administration of prisons.

34. Mr. ZAHARIA (Romania) said that, as a result of recent enactments, it would in future be possible for the Minister of Justice to dismiss judges, magistrates and public prosecutors on grounds of incompetence or misconduct. With regard to public prosecutors, only administrative measures would be taken, but the Ministry had carefully reviewed the activities of judges during the period of the dictatorship, and in the course of a thoroughgoing process of reform a number of judges and magistrates responsible for miscarriages of justice had been dismissed.

35. Mr. CIOCLEI (Romania) said that more than 75 per cent of the previously incumbent regional prosecutors and their deputies had been dismissed and a new system of competitive examinations had been instituted in order to ensure the recruitment of genuinely independent judges.

36. Mr. LUNGEANU (Romania) observed that an important role was also being played by the People's Advocates, who were responsible for ensuring that the rights of individual citizens were duly represented in the two Houses of Parliament.

37. Mr. DIPANDA MOUELLE (Alternate Country Rapporteur) asked whether there had been any protest from the bench regarding dismissals.

38. Mr. ZAHARIA (Romania) replied that he was not aware of any objections.

39. Mr. LUNGEANU (Romania) said that the authority of the Ministry of Justice was basically administrative: it was not entitled to issue instructions to prosecute in a given case. If, however, the prosecutor saw grounds for bringing a criminal charge, the Minister of Justice could authorize criminal proceedings.

40. The CHAIRMAN, speaking as Country Rapporteur, suggested that Romania might be requested to provide relevant texts regarding recent Romanian legislation so that members of the Committee might have a more comprehensive idea of the changing situation in that country.

41. The Committee had been impressed by the obvious determination of the Government of Romania to implement the Convention against Torture, as evidenced by the new institutions and legislation introduced. He thanked the authors of the report and the Romanian delegation for their frankness in admitting the after-effects of the former regime. The Committee believed that education about human rights was needed to combat those effects and to ensure that the changes made were irreversible. The Centre for Human Rights could be of assistance in suggesting educational methods. The Committee looked forward to receiving the Romanian Code of Penal Procedure, preferably in one of its working languages, the Penal Code, the law on the organization of prisons and the statistics that had been requested.

42. The Romanian delegation had provided a great deal of information on the organization of the police and legislation. It had given full and convincing replies to all the Committee's questions. He had been particularly gratified by the answer on article 14, which showed that the State was indeed responsible for the acts of its servants.

43. As to the after-effects of the former regime, which could still be felt in prison conditions and regulations and in the machinations of the police, he requested the Romanian authorities to give answers in its next periodic report to the points raised by members of the Committee, and to state in particular whether proceedings had been initiated against the police and punishment imposed. The Committee had no information on systematic torture in Romania during the period since the Convention against Torture had come into force, but there had been cases of ill-treatment and the Committee wished to know what measures had been taken to combat them.

44. He thanked the Romanian delegation for its constructive replies and hoped that the Committee's remarks would encourage Romania along the path of freedom, democracy and respect for human rights on which it had already made so much progress.

45. Mr. DIPANDA MOUELLE (Alternate Country Rapporteur) endorsed those remarks. He welcomed the new legislation and Constitution adopted by Romania and noted with satisfaction the establishment of the People's Advocate, the Institute for Human Rights and the League for the Defence of Human Rights. He was happy that responsibility for the administration of prisons had been transferred from the Ministry of the Interior to the Ministry of Justice, and was gratified by the abolition of the death penalty and of the Securitate and the fact that the prosecutor himself inquired into cases of torture.

46. He thanked the Romanian delegation for its very frank replies to the questions put by the members of the Committee and congratulated the Romanian authorities on their endeavours to build a truly modern and democratic State under the rule of law.

47. The CHAIRMAN said he assumed that the members of the Committee endorsed those conclusions.

48. It was so decided.

49. Mr. ZAHARIA (Romania) expressed his delegation's appreciation for the Committee's efforts in helping Romania to become a State governed by the rule of law. Romania pledged itself to follow the example of the Committee, whose role it was to reduce the suffering of mankind.

The meeting rose at 6.20 p.m.